(4) = 8.5102

(1).

IN THE HIGH COURT OF JUDICATURE OF C.G. AT BILASPUR (C.G.)

SECOND APPEAL NO. 361 **/2004** Single Bench

APPELLANT: Md. Safi aged 40 yrs. s/o Sheikh Rahimuddin Prop. M/s. Shakil Tailors, Near C.M.D.Chowk, Vidya-Up- Nagar. Main Rd. Bilaspur, C.G.

VERSUS

RESPONDENT : - Dr. Mahesh Kumar Rai aged 69 yrs. S/o Late Dr. Ramacharan Rai Retd. Joint Director, Vet. Services, B.D.A. Colony, Ring Road No.2 Shanti Nagar,Bilaspur C.G.

MEMO OF SECOND APPEAL U/SEC. 100 C.P.C.

OF RS 5100 = 00

(62) (61)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.361 of 2004

Appellant :- Mohd. Safi

Vs

Respondent :- Dr.Mahesh Kumar Rai

Appellant by Shri Azad Siddiqui, Advocate.
Respondent by Shri Upendra Bharat, Advocate.

JUDGEMENT
(Delivered on 01/03/2005)

Heard on admission

The appellant/defendant has preferred the instant second civil appeal against the impugned judgment and decree dated 15.05.2004 passed by the learned first Additional District Judge, Bilaspur in Civil Suit No.-10/A/2004 and by which the judgement and decree passed by the Vth Civil Judge, Class-I, in Civil Suit No210-A/2000 has been confirmed. (Parties hereinafter shall be referred to as per their description in the trail Court.)

The respondent/plaintiff filed a civil suit for vacant possession of the suit house along with damages against the appellant/defendant averring that he is the owner of the suit house and on the basis of oral tenancy, the defendant is tenant of the plaintiff from 01.11.1987 on a monthly rent of Rs. 425/- where he is doing tailoring business and as the plaintiff has retired from his services on 31st December 1990, he needs the said shop as also the other five suit shops for establishing cattle and poultry feed factory. It was also submitted that he got his factory registered with Small Scale Industry for a provisional registration of two years. However, he got his period extended for further period of three years, as he could not obtain vacant possession of the suit shop. It was also submitted that for the purposes of this business, he got his five other adjacent shops vacated which is now in his possession and except these six shops, the plaintiff has no other reasonable and suitable premises within the Bilaspur town for his said business.

The plaintiff further submits that the earlier suit No. 39-A/02 was dismissed for default in the year 1997 but the application for restoration was allowed. However, the revision preferred by the defendant was allowed vide order dated 14.07.2000 by the High Court of Madhya Pradesh, Jabalpur with liberty to the plaintiff to file fresh suit.

The defendant denied the allegations of the plaint and stated that the plaintiff does not require the suit shop bonafidely and the plaintiff desires to give the suit accommodation to others after getting it vacated. It is submitted by the defendant that the plaintiff had earlier proposed to sell the suit property to the defendant and the defendant is ready to purchase the suit shop for a reasonable price.

However, the trial court decreed the suit by recording a finding that the plaintiff requires the shop for his bonafide necessity of opening the cattle feed industry and except the disputed shop and five other shops, there is no other reasonable and suitable shop available with the plaintiff in the Bilaspur town. The appeal preferred by the plaintiff was allowed by the impugned order that the plaintiff bonafidely requires the suit shop and the findings of the trial Court in this regard does not call for any interference as the plaintiff has been able to show his bonafide necessity subjectively and objectively as the plaintiff requires the same for opening of the cattle feed industry after retirement.

The contention of the plaintiff is that he has experience of animal husbandry, veterinary treatment and that he got his industry registered with the Small Scale Industry and has sufficient finance for establishing the said industry and further that he has already got his five other adjacent shops vacated for his business.

The submission of the defendant is that there is no bonafide necessity of the plaintiff as he has already sufficient livelihood from in the form of pension and other fixed deposits and further that the plaintiff has not been able to establish that he has obtained no objection certificate from various departments to establish the said industry and the ground of opening of cattle feed industry is simply an excuse to get the house vacated as the industry can not be established in a densely populated area.

In appeal, the defendant also raised a ground that the plaintiff has already possessed five vacant shops for establishing the cattle feed center/industry business and the business can be run in the five shops. However, all these contentions were not accepted by the first Appellate Court on the ground that the plaintiff needs the suit accommodation and other five vacant shops in possession for establishing cattle feed industry and it is the discretion of the plaintiff to choose the accommodation for opening of his business and the appeal was dismissed holding that the findings arrived by the trail Court is based on subjective and objective analysis of the material available on record and it does not call for any interference.

Learned counsel for the defendant has raised the similar objections as were raised by him during the trial before the trial Court and the first Appellate Court and the substantial questions of law proposed by the defendant are questions of facts, which have been answered by the concurrent findings of both the Courts below against the defendant and suit has been decreed on the basis of objective analysis of the evidence available on record that the plaintiff requires the suit shop for his bonafide necessity of his opening of cattle feed industry and for which he has no reasonable and suitable accommodation in Bilaspur town.

Thus, the appellant/defendant has not been able to show that there is any substantial question of law involved for the present appeal for admission. After considering the facts and circumstances of the case and after going through the records and judgement and decree passed by both the Courts below, I am of the opinion that there is no substantial question of law involved in the present second appeal for its adjudication and it deserves to be dismissed and the same is accordingly dismissed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge